

**NASD
OFFICE OF HEARING OFFICERS**

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Eric W. Carlton
(CRD No. 3078425)

Respondent.

Disciplinary Proceeding
No. 2005000726801

Hearing Officer - SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 9, 2007

INTRODUCTION

This matter (Disciplinary Proceeding No. 2005000726801) was filed on February 20, 2007, by the Department of Enforcement of NASD. Respondent Eric W. Carlton submitted an Offer of Settlement to Enforcement on May 1, 2007. Pursuant to Code of Procedure Rule 9270(e), the Enforcement and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by Enforcement Complainant and approved by the NAC.

Under the terms of the Offer, Carlton has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of his permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

From January 12, 2001 through January 26, 2005, Respondent Eric W. Carlton was associated with NASD member UBS Financial Services, Inc. ("UBS") as a General Securities Representative and General Securities Sales Supervisor. From March 10, 2005 through March 2, 2007, Carlton was associated with several other NASD members.

He is not currently associated with any NASD member firm and has not been the subject of prior disciplinary action by NASD, other self-regulatory organizations, state regulators or the Securities and Exchange Commission.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

A. The NH and EH Family Trust Account

In early 2001, NH and EH opened a securities account, entitled "NH and EH trustees of the H Family Trust," at a Newport Beach branch office of UBS. Carlton was the financial advisor assigned to their Family Trust Account.

By 2002, NH who was 91 years old and EH who was 89 years old were both ill. That year, they signed General Powers of Attorney that designated their son, SH, as their attorney in fact. From at least September 2002, SH was responsible for handling his parents' financial affairs.

In February 2003, EH, who had been diagnosed with multiple myeloma in 1999, was hospitalized with congestive heart failure. She was later moved to a board and care facility where she remained until she died on August 30, 2003. Although Carlton learned of her death in September 2003, contrary to UBS' written procedures, he never notified his branch manager of her death.

EH's husband, NH, had moved into a board and care facility in early 2002. He was hard of hearing and suffered from a variety of other medical ailments. NH died on January 23, 2005.

B. The Five Letters of Authorization

1. The January 2, 2003 LOA

In 2002, LRJ held an IRA Rollover account at UBS. Carlton was his financial advisor. In December 2002, LRJ realized a \$10,485 loss on a security that Carlton had purchased in his account.

On January 8, 2003, Carlton presented a Letter of Authorization to UBS, dated January 2, 2003 and purportedly signed by NH and EH, directing that a check drawn from their Family Trust Account be sent to LRJ. On January 8, 2003, UBS sent a \$9,000 check to LRJ from funds drawn on the Family Trust Account.

In fact, the signatures on that LOA were forged. Moreover, LRJ had never heard of NH and EH and had no reason to receive any amount of money from them. Similarly, SH, NH's and EH's agent and attorney-in-fact, had never heard of LRH and had not signed or authorized anyone to sign the LOA.

2. The September 23, 2003 LOA

In June 2002, EB opened an account at UBS's Newport Beach branch office. Carlton was EB's financial advisor.

On June 25, 2003, Carlton directed the purchase of a Ginnie Mae security for EB's account. By August 23, 2003, that security had an unrealized loss of \$7,203.

On September 23, 2003, Carlton sent an e-mail to a UBS sales assistant. Its subject line identified the NH and EH Family Trust Account number and name. The e-mail's text stated, "Client would like to journal \$8000 to another account, [EB Family Trust Account]. Please create an LOA to complete this . . . Thank you. I will be seeing the client this afternoon around 12:00 p.m. if you have the time this morning..."

On September 26, 2003, Carlton presented a Letter of Authorization, dated September 23, 2003, purportedly signed by both NH and EH, directing a journal transfer of \$8,000 from the NH and EH Family Trust Account to the EB Family Trust Account. On September 26, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to the EB Family Trust Account.

In fact, NH's and EH's signatures were forged. EH had died three weeks before she purportedly signed the LOA. NH, who was 92 years old, was in a board and care facility. Moreover, EB had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did she know SH. And SH did not know EB nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

3. The September 24, 2003, LOA

In February 2002, DW opened an individual account at the Newport Beach branch of UBS. Carlton was his financial advisor.

Carlton purchased, for DW's account, three individual Freddie Mac mortgaged back securities that, by August 2003, had an unrealized loss of \$6,725.

On September 26, 2003, Carlton presented a Letter of Authorization, dated September 23, 2003, purportedly signed by both NH and EH, directing a transfer of \$8,000 from their Family Trust Account to DW's account. On September 26, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to DW's account.

In fact, NH's and EH's signatures were forged. EH had died more than three weeks before she purportedly signed the LOA. And NH, who was 92 years old, was in a board and care facility. Moreover, DW had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did he know SH, NH's and EH's son and attorney in fact. Likewise, SH did not know DW nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

4. The November 5, 2003 LOA

In August 2001, CW and her husband opened a Family Trust Account at the Newport Beach branch of UBS. Carlton was their financial advisor.

Carlton purchased for her account, mortgaged back securities, bond funds and Government securities. Between February 2003 and October 31, 2003, the CW Family Trust Account declined in value by about \$5,533.49.

On November 14, 2003, Carlton presented a Letter of Authorization, dated November 5, 2003, purportedly signed by both NH and EH, directing the transfer of \$8,000 from their Family Trust Account to the CW Family Trust Account. On November 14, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to the CW Family Trust Account. Carlton told CW that \$8,000 was transferred into her account to make up for losses on some of the bonds in her account.

In fact, NH's and EH's signatures were forged. EH had been dead for nearly three months, when she purportedly signed the Letter of Authorization. Moreover, CW had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did she know SH. SH did not know CW or FW nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

5. The January 14, 2005 LOA

In February 2004, CP and his wife, JP, agreed to transfer their separate IRA accounts to the Newport Beach California branch of UBS. Carlton was their UBS financial advisor. CP and JP also discussed with Carlton opening a joint cash account ("Joint Cash Account"). Although an account number was assigned, the account was never funded or activated.

In 2004, CP repeatedly complained to Carlton that the fees and charges on his accounts were in excess of what Carlton represented they would be. He also complained about the poor performance of one of his accounts. In early January 2005, CP contacted Carlton after he received his 2004 year end account summaries and complained that the fees and charges on his account were approximately double what Carlton had represented they would be.

Shortly thereafter, notwithstanding the fact that EH had been dead for nearly 16 months and NH was 93 years old, critically ill and close to death, Carlton presented a Letter of Authorization, purportedly signed by NH and EH, directing the transfer of \$5,250 from the NH and EH Family Trust Account to the CP and JP Joint Cash Account. When Carlton presented the LOA, he assured UBS personnel that NH and EH were acquainted with CP and JP.

In fact, Carlton's statement was false and NH's and EH's signatures were forged. CP and JP had no relationship with NH and EH whatsoever. Indeed, CP and JP had never heard of NH

and EH. And they had no reason to receive any amount of money from them. Nor did they know SH. Moreover, SH did not know CP or JP. And SH did not sign or authorize anyone to sign NH's or EH's name.

C. RK's Account Application

RK is a widow and a retired high school teacher. In June 2003, Carlton cold-called her and attempted to persuade her to transfer her existing brokerage account to UBS. After that initial call, he periodically appeared at her home to persuade her to transfer her existing account to UBS. In late July, 2003, RK told Carlton that she would transfer the cash balance of her Financial Network Investment Corp ("FNIC") account but that she wanted American Funds to be the custodian of the cash balance.

On July 29, 2003, Carlton went to RK's home and brought (i) an Account Transfer Form and (ii) an IRA Application and Adoption Agreement. RK signed but did not date either form because, as she explained to Carlton, she was not yet ready to make the transfer.

RK was ready on August 15, 2003. She wrote the date "8/15/03" on the IRA Application and Adoption Agreement and completed, signed, and dated the Account Transfer form. On the Account Transfer Form, in response to the question, "Do you wish to transfer the entire account," RK checked "No." Alongside that she wrote, "The cash balance approx. \$467,371.42 as of 8/13/03." RK also wrote the date "8/15/03" on the Account Transfer Form. Carlton told RK he would provide her with a copy of each document after he completed the forms.

On August 26, 2003, Carlton provided RK with copies of both documents. She did not immediately notice that the documents that Carlton gave her had been altered. Although RK had dated the Application "8/15/03" the date had been altered to read "7/29/03." Also, the first page

of the Account Transfer Form had been rewritten in someone else's handwriting. When RK inquired about the changes, Carlton told her they were inconsequential.

Unbeknownst to RK, Carlton created yet a third version of the Account Transfer Form which he provided to his firm. On that third version, Carlton altered RK's answer to the question, "Do you wish to transfer the entire account," to make it appear as though RK checked, "Yes." On that third version, Carlton also deleted RK's handwritten notation that said, "The cash balance approx. \$467,371.42 as of 8/13/03."

In early September 2003, RK learned that, contrary to her wishes, her entire IRA account had been transferred from FNIC to UBS. When RK spoke to Carlton, he falsely stated that he had requested that only the cash balance be transferred.

On September 5, 2003, Carlton told RK that the cash balance had been placed into an American Funds money market account. That statement was also false. On that day, Carlton purchased \$467,000 of Class "A" shares of American Funds' U.S. Government Securities Fund. American Funds classifies its U.S. Government Securities Fund as a bond fund rather than as a money market fund. The Order Ticket falsely indicated that a Letter of Intent dated September 4, 2003, stated that RK would purchase shares worth \$1 million in that fund. In fact, RK neither asked for nor authorized a purchase of shares in American Funds' U.S. Government Securities Fund and never executed a Letter of Intent.

When RK learned that Carlton had purchased shares of the Government Securities Fund for her IRA account, she immediately telephoned Carlton. In the ensuing telephone conversation, Carlton falsely told RK that the Government Securities Fund was a money market fund.

FIRST CAUSE OF ACTION
Submission of Falsified Records
(Violation of NASD Conduct Rule 2110)

By submitting the documents referenced above, namely, by submitting:

- (i) the January 2, 2003 LOA which directed that \$9,000 be transferred from the NH and EH Family Trust account to LRJ's account;
- (ii) the September 23, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust Account to the EB Family Trust Account;
- (iii) the September 24, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust Account to DW's account;
- (iv) the November 5, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust account to the CW Family Trust account;
- (v) the January 14, 2005 LOA which directed that \$5,250 be transferred from the NH and EH Family Trust account to CP's and JP's account;
- (vi) RK's IRA Application and Adoption Agreement; and
- (vii) RK's Account Transfer Form,

Carlton implicitly represented the documents to be genuine, when he knew or should have known that the signatures were not genuine and/or the documents had been altered. In so doing, Carlton submitted forged and falsified documents to his firm and caused its records to be falsified.

The submission of each falsified record constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2110 by Carlton.

SECOND CAUSE OF ACTION

Misuse of Customer Funds

(Violation of NASD Conduct Rules 2330(a) and 2110)

Carlton misused his customers' funds by causing unauthorized transfers from NH's and EH's Family Trust Account. This misuse included causing the transfer of:

- (i) \$9,000 from the NH and EH Family Trust Account to LRJ's account;
- (ii) \$8,000 from the NH and EH Family Trust Account to EB's Family Trust Account;
- (iii) \$8,000 from the NH and EH Family Trust Account to DW's account; and
- (iv) \$8,000 from the NH and EH Family Trust Account CW's Family Trust Account.

Each such transfer was an improper use of customer funds and constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2330(a) and 2110 by Carlton.

THIRD CAUSE OF ACTION

Unauthorized Trading

(Violation of NASD Conduct Rule 2110 and IM 2310-2)

By purchasing shares in American Funds' U.S. Government Securities Fund in RK's account, without her knowledge, authorization or consent, Carlton engaged in unauthorized trading, and violated NASD IM 2310-2 and Conduct Rule 2110.

FOURTH CAUSE OF ACTION

Forgery

(Violation of NASD Conduct Rule 2110)

In January 2005, Carlton forged, or caused to be forged, the signatures of NH and EH on a Letter of Authorization that directed the transfer of \$5,250 out of the NH and EH Family Trust account.

This constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2110 by Carlton.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

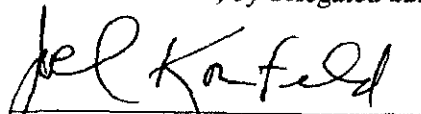
It is ordered that Respondent Eric W. Carlton be barred from association with any NASD member in any capacity.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read "Joel Kornfeld", written over a horizontal line.

Joel T. Kornfeld

Regional Counsel

NASD Department of Enforcement

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